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INSTITUTIONAL AND BUDGETARY MATTERS

ARRANGEMENTS FOR RELOCATION OF THE CONVENTION SECRETARIAT TO BONN

Note by the secretariat

I. INTRODUCTION

1. Following the acceptance by the Conference of the Parties (COP), at its first session, of the offer made by the Government of the Federal Republic of Germany to host the Convention secretariat, the COP invited "the Executive Secretary of the interim secretariat to consult the authorities of the host Government regarding arrangements for the smooth transition from the interim to the Convention secretariat" (FCCC/CP/1995/7/Add.1, decision 16, para. 2).

2. One of the main topics of these consultations has been the legal regime for the establishment of the Convention secretariat in Germany. This matter also involves the United Nations, to which the Convention secretariat is institutionally linked and which has concluded an agreement with the Government of Germany concerning the headquarters of the United Nations Volunteers Programme (UNV), which is also to be relocated from Geneva to Bonn. That agreement provides that it may be made applicable, mutatis mutandis, to entities such as the Convention secretariat. The secretariat is thus covered by this provision, as also by related instruments regulating the occupancy and use of the United Nations premises in Bonn.

3. Consultations are also proceeding with the Government of Germany on practical arrangements for the relocation of the Convention secretariat to Bonn, including the elements of financial and material support contained in the offer of that Government to the COP.

4. At its meeting on 31 October 1995, the Bureau of the COP noted the intention of the Convention secretariat to report on these matters to the Subsidiary Body for Implementation (SBI), to seek necessary guidance and to obtain a mandate to conclude a headquarters agreement, as appropriate.

5. The present note provides information to the SBI on these matters and seeks, in particular, appropriate action to clarify the juridical personality and legal capacity of the Convention secretariat. In this connection, it would be the intention of the Executive Secretary to conclude and sign, with the United Nations and the Government of Germany, an appropriate agreement that applies, mutatis mutandis, the terms of the Agreement already entered into between the United Nations and the Government of Germany regarding the headquarters of UNV.

6. Guidance is also sought on modalities for maintaining channels of communication between the secretariat and Parties during and after the relocation of the secretariat to Bonn.

II. LEGAL ARRANGEMENTS FOR THE UNFCCC SECRETARIAT

7. It will be recalled that the COP, at its first session, decided that "the Convention secretariat shall be institutionally linked to the United Nations, while not being fully integrated in the work programme and management structure of any particular department or programme" (emphasis added) (FCCC/CP/1995/7/Add.1, decision 14, para. 2). As a consequence of this particular status of the Convention secretariat, the legal regime enjoyed by the United Nations cannot be extended automatically to the Convention secretariat.

8. Nevertheless, the agreement between the United Nations and the Government of Germany regarding the headquarters of UNV, signed in New York on 10 October 1995, provides in Article 4, paragraph 3, that "this agreement may also be made applicable mutatis mutandis to other intergovernmental entities, institutionally linked to the United Nations, by agreement among such entities, the Government and the United Nations." This provision was intended to cover, inter alia, the Convention secretariat.

9. Accordingly, the Executive Secretary is pursuing discussions with the Government of Germany and the United Nations Office of Legal Affairs, in order to draw up an appropriate agreement between the Government of Germany, the United Nations, and the Convention secretariat.

10. This agreement would extend the general provisions of the agreement of 10 October 1995, in particular those pertaining to privileges and immunities. It would also cover the particular aspects that are specific to the functioning of the Convention secretariat, inter alia, relative to the hosting of intergovernmental meetings and access of participants thereto. However, in order for the Executive Secretary to execute such an agreement, the questions of juridical personality and legal capacity of the Convention secretariat need to be clarified.

11. The Executive Secretary requested advice on this matter from the Office of Legal Affairs. The relevant paragraphs of the advice received on 18 December 1995 from that Office are reproduced below:

> *"1. This is with reference to your ... seeking our views ... on the question of juridical personality and legal capacity of the Secretariat under the United Nations Framework Convention on Climate Change (hereinafter "the Convention Secretariat").*
>
> *2. The Convention Secretariat is one of the bodies foreseen in this instrument. Thus, in accordance with paragraph 2 of Article 7, the Conference of the Parties is "the supreme body of [the] Convention. Furthermore, the Convention established a subsidiary body for scientific and technological advice (Article 9), a subsidiary body for implementation (Article 10) and, finally, a financial mechanism (Article 11). Our analysis of both the legal nature and functions of these bodies indicates that they have certain distinctive elements attributable to international organizations. However, it is clear that none of these bodies is de jure a UN subsidiary organ.*
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> *3. As you will recall, in accordance with our previous advice regarding the arrangements for the first meeting of the Parties of the Convention, the relevant conference agreement was concluded between the Secretariat of the Convention and the Government of Germany. This advice was based, inter alia, on the provisions of paragraph 2(f) of Article 8 which empowered the Secretariat to "enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions" (emphasis added).*
>
> *4. However, none of the above-referenced bodies of the Convention has been duly vested by the Parties with a clear juridical personality on the international plane. Nor have the entities established by the Parties been accorded the appropriate privileges and immunities, including immunity from legal process.*
>
> *5. In view of the distinct nature of the Convention bodies and notwithstanding the fact that the Convention Secretariat is "institutionally linked to the United Nations", the legal regime enjoyed by the United Nations under applicable agreements cannot be automatically attached to the Convention Secretariat. Therefore, it would, in our view, be appropriate to clarify the ambiguity concerning the nature and legal status of the Convention Secretariat under international law which would help to focus the forthcoming discussions with Germany on the mutatis mutandis applicability of the*

recently concluded UNV Headquarters Agreement to the Convention Secretariat. One possible way of clarifying this ambiguity would be if the Conference of the Parties or the Subsidiary Body for Implementation takes a decision conferring the required juridical personality and legal capacity upon the Convention Secretariat and according it such privileges and immunities as are necessary for the fulfilment of its purposes.

6. In the context of this approach, I would like to draw your attention to decision VI/16 taken in October 1994 by the sixth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer clarifying the nature and legal status of the Multilateral Fund as a body under international law and, in particular, conferring upon it juridical personality and the legal capacities to enter into contractual arrangements, acquire and dispose of movable and immovable property and institute legal proceeding. By the same decision, the fund was vested with the necessary privileges and immunities, and its officials were also accorded such privileges and immunities as are necessary for the independent exercise of their functions."

12. The text of the decision cited in paragraph 6 of the text quoted in paragraph 11 above is as follows:

"Decision VI/16. Juridical personality, privileges and immunities of the Multilateral Fund

Recalling *decision IV/18 of the Fourth Meeting of the Parties, which established the Financial Mechanism, including the Multilateral Fund for the Implementation of the Montreal Protocol, provided for in Article 10 of the Montreal Protocol, as amended in London on 29 June 1990,*

To clarify the nature and legal status of the Fund as a body under international law as follows:

(a) Juridical personality: *The Multilateral Fund shall enjoy such legal capacity as is necessary for the exercise of its functions and the protection of its interests, in particular the capacity to enter into contracts, to acquire and dispose of movable and immovable property and to institute legal proceedings in defence of its interests;*

(b) Privileges and immunities:

(i) The Fund shall, in accordance with arrangements to be determined with the Government of Canada, enjoy in the territory of the host country, such privileges and immunities as are necessary for the fulfilment of its purposes;

(ii) The officials of the Fund Secretariat shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Multilateral Fund."

13. The completion of the legal arrangements for establishing the Convention secretariat in Bonn has become urgent, in that the relocation is now due to start at the beginning of August 1996. It would be necessary for an agreement covering, inter alia, the privileges and immunities of the Convention secretariat and its staff to be in effect as early as possible before then. Account should be taken of the fact that some time - at least six to ten weeks - would be needed, after the signature of such an agreement for the necessary procedures to be completed by the Government of Germany. Accordingly, it is hoped that, despite the short notice, which is regretted, the SBI will be able to take the necessary enabling action at this session.

14. With regard to the clarification of the juridical personality and legal capacity of the Convention secretariat, the SBI may wish to adopt a decision on the lines of that cited in paragraph 12 above, subject to endorsement by the COP at its second session. The text of such a decision can be made available at short notice. If such a decision cannot be adopted during the current session, the SBI is invited to endorse the approach advised by the United Nations Office of Legal Affairs and to recommend the adoption of a decision by the COP, at the start of its second session.

15. Furthermore, in order to advance the conclusion of the agreement regarding the establishment of the Convention secretariat in Bonn, the SBI is invited to endorse the intention of the Executive Secretary to conclude and sign, with the United Nations and the Government of Germany, an appropriate agreement that applies, mutatis mutandis, the terms of the agreement entered into on 10 October 1995 between the United Nations and the Government of Germany regarding the headquarters of UNV. This would be consistent with Article 8, paragraph 2 (f), of the Convention.

16. It would be the further intention of the Executive Secretary to consult the Chairman and Officers of the SBI before signing an agreement.

III. MANAGEMENT OF THE COMMON PREMISES IN BONN

17. On 13 February 1996, an agreement was signed between the United Nations and the Government of Germany establishing the terms and conditions under which that Government transferred permanently to the United Nations the right to use and to occupy, free of rent, the premises to be used by UNV, the Convention secretariat and other offices of the United Nations established in Bonn.

18. The agreement specifies that the United Nations shall make available appropriate space in their premises to the Convention secretariat. It also contains specific provisions with regard to, inter alia, the occupancy and use of the premises, their maintenance, public and other services for the premises and the settlement of disputes.

19. The agreement establishes that the terms and conditions under which the premises shall be occupied and used by the intergovernmental entities institutionally linked to the United Nations (such as the Convention secretariat) would be determined in separate arrangements between the United Nations and such entities. Furthermore, the agreement provides for the United Nations to designate a representative for the purposes of this agreement, thus becoming the focal point for managing the premises and interacting with the host Government thereon. Subsequently, the United Nations designated the United Nations Development Programme (UNDP) to carry out this function.

20. Accordingly, the Executive Secretary of the Convention secretariat has started discussions with UNDP to conclude arrangements regarding the occupancy, use and maintenance of the premises and for sharing of the associated costs.

IV. PRACTICAL ARRANGEMENTS FOR THE RELOCATION OF THE SECRETARIAT

21. The Convention secretariat is engaged with its counterparts in the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) in completing practical arrangements for the relocation and coordinating these with UNDP/UNV. On the German side, the lead Ministry is the Federal Ministry for Cooperation (BMZ).

22. The new offices of the Convention secretariat will be in the future United Nations premises in Bonn, known as "Haus Carstanjen", on the left bank of the Rhine in Plittersdorf, an area close to relevant Government offices including the BMU. The street address is: Martin-Luther-King-Strasse 8, D-53175 Bonn. This address will be effective in August, and will be complemented by a post office box, as well as new telephone, telefax, and electronic mail addresses. These will be communicated to Parties and observers as soon as they are obtained and the dates when they become effective will be indicated.

23. The Government of Germany is undertaking a major renovation of the premises. In addition, in fulfilment of its specific offer to the COP, the Government of Germany will furnish and equip the offices of the Convention secretariat, providing them, inter alia, with state-of-the-art computer and telecommunications equipment.

24. It is expected that renovated offices in Haus Carstanjen will start to be available from 1 July 1996, while the full set of offices destined for the Convention secretariat should be ready by 15 September. Consequently, some staff moving in August will be accommodated in temporary offices for a time.

V. FINANCIAL ARRANGEMENTS

25. As part of its overall commitment to host the secretariat in Bonn, the Government of Germany will be covering the one-time costs of the relocation and installation of the offices of the Convention secretariat, the staff, their families and their personal effects, as well as the above-mentioned costs related to the refurbishing and equipment of the secretariat offices.

26. In addition to the above costs, the Government of Germany has agreed to provide to the Convention secretariat, on an annual basis, a supplementary contribution of DM3.5 million to cover the costs of various events related to the implementation of the work programme of the Convention in Bonn. The modalities for the first payment of this grant are currently being discussed; they are referred to in document FCCC/SB/1996/6 on institutional and budgetary matters.

VI. IMPACT ON STAFF

27. The decision to start the move to Bonn in August was taken in the light of the schedule of COP 2, the availability of office space and the preferences of staff. Some staff will move later in the year; others will stay on for a while in Geneva prior to leaving the secretariat. The full impact of the relocation on the availability of existing staff to work in Bonn will not be known until the end of March, which is the deadline for the remaining uncertainties to be resolved.

28. The relocation to Bonn has mobilized the interest and activity of all staff members concerned. A "Bonn Task Force" has been elected to ensure that staff interests are kept to the fore in all aspects of the move and to facilitate the resettlement of staff and their families in Bonn.

29. Evidently, preparations for this resettlement - as well as employment planning for those not joining the move - are starting to consume a considerable amount of staff time. This diversion of effort will peak when the move actually takes place and in the months thereafter. The vacancies caused by the departure of some staff members will also reduce productivity for a while. It will be some time before normal productivity is restored.

VII. LIAISON ARRANGEMENTS

30. From its Geneva base, the Convention secretariat has built up a system of communication with the Parties to the Convention through the Permanent Missions to the United Nations Office at Geneva or, in the absence of such missions, through the Permanent Missions to the United Nations in New York. The relocation of the secretariat to Bonn will require changes to these lines of communication in many cases.

31. The secretariat will shortly invite each Party to indicate its preferred channel of communication with the secretariat in Bonn, taking into account, inter alia, the location of its embassy in Germany both now and in the future.

32. In addition, the secretariat is exploring the possibility of maintaining some liaison capacity in Geneva, at least until the end of 1997. The purpose of this capacity would be not only to maintain contact with those Parties that may wish to continue to cover the Convention from their Geneva missions for a transitional period, but also to be a working contact with the United Nations Office at Geneva, which will continue to be the source of administrative and conference services for the secretariat in Bonn. Moreover, it would facilitate liaison by the secretariat with Geneva-based programmes and activities related to climate change and reduce the need for travel to participate in meetings in Geneva.

33. The cost effectiveness of such an arrangement will be assessed before any definitive action is proposed. The possibility will be explored in this connection of assuring this liaison jointly with the secretariat of the Convention on Biological Diversity and any other interested entities. Such a joint arrangement would be economical.

34. A further report on these matters will be submitted to the COP at its second session. Meanwhile, Parties and the SBI may wish to give preliminary reactions to the ideas put forward.

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